



WILDEARTH GUARDIANS

187 IBLA 349

Decided May 6, 2016



United States Department of the Interior

Office of Hearings and Appeals

Interior Board of Land Appeals
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WILDEARTH GUARDIANS

IBLA 2014-155

Decided May 6, 2016

Appeal from a decision by the Field Manager for the Uncompahgre Field Office of the Colorado Bureau of Land Management authorizing the lease of coal.
COC-75916.

Set aside and remanded.

1. Administrative Procedure: Decisions;
Bureau of Land Management: Delegation of Authority

If a decision is not issued by a BLM employee with delegated authority to issue it, then the action does not bind the Department. The purported decision has no legal effect, and the Board properly sets it aside and remands it for further action. Opining on the merits of an unauthorized BLM decision would constitute an advisory opinion, which the Board will not issue.

APPEARANCES: Samantha Ruscavage-Barz, Esq., Santa Fe, New Mexico, for WildEarth Guardians; Michael Drysdale, Esq., and William Prince, Esq., Dorsey & Whitney LLP, Minneapolis, Minnesota, for Bowie Resources, LLC; Kristen C. Guerriero, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE RIECHEL

WildEarth Guardians appeals a Decision Record (DR) issued by the Field Manager for the Uncompahgre Field Office of the Colorado Bureau of Land Management (BLM) authorizing the lease of coal in the Spruce Stomp Lease by Application (LBA) tract. Because we find that the Field Manager was not authorized to approve the coal lease sale, the DR has no legal effect. We set aside the DR and remand for further action consistent with this decision.

Background

Bowie Resources, LLC (Bowie), submitted the LBA on October 12, 2012.¹ The application area contains nearly 1,800 acres of land managed by the U.S. Forest Service and BLM and private land with federal minerals.² The application area is adjacent to the Bowie No. 2 Mine, an underground coal mine northeast of Paonia, Colorado.³ If approved, the LBA might supplement the Bowie No. 2 Mine's reserves.⁴

BLM and the Forest Service prepared an Environmental Assessment (EA) to identify potential environmental impacts related to the LBA.⁵ On February 4, 2014, the Field Manager for BLM's Uncompahgre Field Office issued a Finding of No Significant Impact (FONSI) and a DR documenting her "decision to offer for lease the B seam in the Spruce Stomp LBA tract COC-75916 as described in [the EA]."⁶

WildEarth Guardians appealed the DR, arguing that the BLM Field Manager lacked authority to approve the proposed lease and that the EA supporting the DR is inadequate.⁷ Because we resolve this appeal based on the absence of authority for the Field Manager to approve the LBA, we do not address the arguments about the adequacy of the EA.

Authority to Approve Coal Lease Sales

The Mineral Leasing Act authorizes the Secretary of the Interior to issue coal leases, in her discretion, upon request by any qualified applicant.⁸ The regulations implementing the Mineral Leasing Act empower an "authorized officer" to act for the Secretary.⁹ "Authorized officer" is defined as "any employee of the [BLM] delegated the authority to perform the duty described in the section in which the term is used."¹⁰

¹ Administrative Record (AR) 2.01-1.

² AR 2.01-1 at 4, 6.

³ AR 6.02-2 at 4.

⁴ AR 1.01-6 at 1 (Notice of Availability of the EA and Notice of Public Hearing).

⁵ AR 6.02-2 at 7 (DOI-BLM-CO-S050-2013-0010 EA).

⁶ AR 6.03-3 at 4, 6.03-4 at 1, 12.

⁷ Notice of Appeal; Statement of Reasons (SOR) at 2.

⁸ 30 U.S.C. § 201(a)(1) (2012). *See also* 43 C.F.R. Subpart 3425 (Leasing on Application).

⁹ *See, e.g.*, 43 C.F.R. §§ 3425.1-8, 3425.3(a).

¹⁰ 43 C.F.R. § 3400.0-5(b).

To determine which BLM employee has authority to approve LBAs, we consult the Department's and BLM's written delegations of authority.¹¹

The Secretary has delegated her authority to implement the Mineral Leasing Act to the Assistant Secretary – Land and Minerals Management.¹² The Assistant Secretary, in turn, delegated her authority to the Director of BLM.¹³

Delegations from the Director of BLM to other BLM employees are documented in the BLM Manual, which reflects that the BLM Director delegated his authority to grant LBAs to the State Directors.¹⁴ Delegations from the State Director are documented in State Office supplements to the BLM Manual.¹⁵

In the Colorado State Office Supplement to the BLM Manual, the Colorado State Director and Associate State Director delegated the authority to approve applications for coal lease sales outside of coal production regions under 43 C.F.R. § 3425.1-5 (LBAs) to the Deputy State Director and the Solid Minerals Branch Chief, Colorado State Office.¹⁶ Because the Colorado State Director delegated authority to “approve” National Environmental Policy Act (NEPA)¹⁷ compliance documents “to the level of the specific delegation of authority for approving the proposed action,” the Deputy State Director and Solid Minerals Branch Chief also have delegated authority to approve NEPA documents for LBAs.¹⁸

¹¹ See 200 Departmental Manual (DM) 1.3 (delegations from the Secretary are issued in the Delegation Series of the DM), 2.3 (“Redelegations of authority within a bureau or office will be issued as part of the bureau or office directives system.”); BLM Manual Section 1203, Delegation of Authority (Internal) (Nov. 16, 2006).

¹² 209 DM 7.1.

¹³ 235 DM 1.1K.

¹⁴ BLM Manual Section 1203, App. 1 at 66-67.

¹⁵ BLM Manual Section 1203 at .22.

¹⁶ Colorado State Office Supplement to the BLM Manual, Section 1203 (Colo. Supp.), at .04H (the Associate State Director “has the full delegated authority” of the State Director); *id.*, App. 1 at 80 (authority to approve LBAs delegated to the Deputy State Director and Solid Minerals Branch Chief) (Feb. 4, 2011).

¹⁷ 42 U.S.C. §§ 4231-4370h (2012).

¹⁸ Colo. Supp., App. 1 at 40.

Discussion

The FONSI and DR for the Spruce Stomp LBA were signed by the Field Manager for the Uncompahgre Field Office of BLM.¹⁹ The FONSI is based in part on the Spruce Stomp Coal LBA EA, which is the NEPA compliance document for the Spruce Stomp LBA.²⁰ The Field Manager also signed the DR, in which she states, “It is my decision to offer for lease the B seam in the Spruce Stomp LBA tract COC-75916 as described in [the Spruce Stomp LBA EA].”²¹ The Field Manager’s signature is identified as the “signature of authorized official.”²² The DR describes the right to appeal the “BLM decision to offer the coal LBA,” which must be filed within “30 days from this decision.”²³

While these facts appear to show that the Field Manager acted without appropriate delegations of authority when she issued the FONSI and DR, BLM asserts that “the Field Manager’s approval of the NEPA document and issuance of the FONSI and Decision are appropriately delegated and constitute a recommendation to the Colorado State Office.”²⁴ BLM first argues that the Field Manager could approve the EA by issuing the FONSI because she is authorized to approve NEPA documents.²⁵ But the Colorado State Director delegated approval of NEPA compliance documents only “to the level of the specific delegation of authority for approving the proposed action,” which, in the case of LBAs, is the Deputy State Director and Solid Minerals Branch Chief.²⁶ Although there is an “X” in the column for the Field Manager under “Authority Delegated To,” we read this as indicating only that Field Managers can approve NEPA documents if they also have authority to approve the proposed action. Here, only the Deputy State Director and Solid Minerals Branch Chief have delegated authority to approve LBAs, so only those officials have delegated authority to approve a NEPA document supporting approval of an LBA.

In any event, the FONSI is not the document on appeal in this case, nor could it be, because only agency decisions may be appealed.²⁷ WildEarth Guardians properly

¹⁹ AR 6.03-3 at 5; 6.03-4 at 12.

²⁰ AR 6.03-3 at 5 (the Field Manager signed her name after “Approved:”).

²¹ AR 6.03-4 at 1.

²² *Id.* at 12.

²³ *Id.*

²⁴ Answer at 5 (citing the Colo. Supp.).

²⁵ Answer at 5-6.

²⁶ Colo. Supp., App. 1 at 40.

²⁷ See 43 C.F.R. §§ 4.1(b)(2), 4.410(a).

appeals the DR, which authorizes the lease of coal in the Spruce Stomp LBA tract. In this regard, BLM claims that because only the State Director, Deputy State Director, or Solid Minerals Branch Chief can issue a lease, it necessarily follows that the DR and FONSI can only be a “recommendation to the Colorado State Office” where these individuals are located.²⁸ BLM’s argument is contrary to the plain language of the DR, however, which documents the Field Manager’s “decision to offer” the LBA.²⁹ Moreover, the word “recommendation” does not appear in the DR.

The BLM NEPA Handbook explains BLM’s decision-making process: “BLM has chosen to use the ‘decision record’ (DR) to document the decision regarding the action for which the EA was completed.”³⁰ The decision-maker signs and dates the DR, and the action must be implemented in accordance with the DR.³¹ This is exactly what BLM purported to do here: the Field Manager signed and dated the DR, declaring her “decision to offer” the LBA.

[1] Based on BLM delegations of authority, we find that the Field Manager was not authorized to approve the LBA in the DR. If a decision is not issued by an employee with delegated authority to issue it, then the action does not bind the Department and is not properly considered a decision of the BLM.³² The purported decision therefore has no legal effect, and the Board properly sets it aside and remands it for further action.

We recognize that remanding this case to BLM could delay the ultimate resolution of this case, but opining on the merits of an unauthorized BLM decision would be an advisory opinion, which the Board will not issue. *See, e.g., Uintah County*, 182 IBLA 191, 197 (2012); *Robert L. Bayless Producer*, 177 IBLA 83, 85 (2009); *Robert C. Lewis v. BLM*, 173 IBLA 284, 294 (2008).

²⁸ Answer at 5-6.

²⁹ AR 6.03-4 at 1, 12.

³⁰ BLM NEPA Handbook H-1790-1 at 84 (Jan. 2008). *See also id.* at 83 (“The FONSI is not the authorizing document for the action: the decision record is the authorizing document.”).

³¹ *Id.* at 85, 86.

³² *See* BLM Manual Section 1203, Glossary of Terms (defining “authority” as “[t]he ability to make the final, binding decision or to take specific action, or both, as an official representing the United States Government. Such authorities have a legal basis in statute or regulation.”).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, we set aside and remand BLM's decision for further action consistent with this opinion.

_____/s/
Silvia M. Riechel
Administrative Judge

I concur:

_____/s/
James K. Jackson
Administrative Judge